THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.23988 OF 2001

ORDER:

Heard Sri V.Padmanabha Rao, learned counsel representing the learned counsel for the petitioner on record, and the learned Government Pleader for Cooperation for the respondents 1 and 2. Despite service of notice, none appeared for the third respondent.

Order, dated 19.11.2002, passed by the Nagaram Cooperative Rural Bank Limited, Mamidikuduru-third respondent herein, seeking to recover the salaries paid to the petitioner with effect from 01.01.1991, is under challenge in the present Writ Petition.

According to the petitioner, he joined in the third respondent-bank as a clerk on 31.12.1981 and got promotion as Secretary in the year, 1986. The State Government issued Memo, dated 14.10.1991, revising the scales of pay of the Secretaries and made them on par with Category-V of the employees of the District Cooperative Central banks. The third respondent-bank did not take any decision to implement the said Memo, dated 14.10.1991, which compelled the petitioner to approach the composite High court by filing W.P.No.3375 of 2001. The composite High Court *vide* order, dated 12.03.2001, in W.P.M.P.No.4323 of 2001, directed the third respondent to grant pay of Rs.1640-4595 in favour of the petitioner and, in pursuance of the same, according to the petitioner, the third respondent-bank considered the claim of the petitioner for grant

of scales, as referred to supra, and the Board of Management of the third respondent-bank also passed resolution on 25.04.2001, resolving to extend the scales of pay in terms of Memo, dated 14.10.1991, together with arrears of pay. It is further stated that the General Body of the third respondent-bank also ratified the resolution of the Board of Management on 19.09.2001. It is further stated that, in the next General Body Meeting held on 29.03.2002, the third respondent-bank passed the resolution approving arrears of salary paid to the petitioner and also made budgetary allocation for future payment of salaries to the petitioner. It is stated that, on the instructions of the second respondent, third respondent-bank issued proceedings, dated 19.11.2002, directing the petitioner to deposit salary drawn by him from 01.01.1991 forthwith.

In the above background, assailing the said order of recovery, dated 19.11.2002, the present Writ Petition came to be instituted in the year, 2002. The composite High Court on 29.11.2002, in W.P.M.P.No.30104 of 2002 granted interim stay of recovery, pursuant to the impugned notice, dated 19.11.2002. The said interim order is still continuing and the petitioner must have also retired by this time, since as on the date of institution of the Writ Petition the age of the petitioner was 42 years. Apart from other aspects of the matter, the principal contention, which is sought to be urged by the petitioner in the present Writ Petition, is that the impugned action came to be resorted to without being preceded by any notice and opportunity to submit explanation/objections.

Despite service of notice, opposing the said averments, no counter-affidavit has been filed, as such, the said averments made in the writ affidavit are required to be treated as true and correct. It is a settled and well established principle of law that any action, which has civil consequences, must necessarily be preceded by notice and opportunity to the persons likely to be affected by such action. In the considered opinion of this Court, respondents herein adhered to the said principle of law in breach. On that ground alone, this Court is inclined to set aside the impugned order.

For the aforesaid reasons, Writ Petition is allowed, setting aside the order of recovery, dated 19.11.2002, passed by the Nagaram Cooperative Rural Bank Limited, Mamidikuduru-third respondent herein. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

_____

A.V.SESHA SAI, J

28th February, 2022.
Tsy